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EXECUTIVE SESSION

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WEDNESDAY, NOVEMBER 7, 1979

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United States Senate,
Committee on Finance,
Washington, D. C.

The Committee met, pursuant to notice, at 10:30 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long, Chairman of the Committee, presiding.

Present: Senators Long, Talmadge, Ribicoff, Nelson, Moynihan, ~~Baucus, Dole, Packwood, Danforth, Wallop, and Durenberger.~~

The Chairman: Let us call this meeting to order, please.

Senator Nelson is going to raise a point with Mr. Ross on behalf of the Social Security system. I recognize the Senator for that purpose.

Senator Nelson: Mr. Chairman, as I think everybody has noted from the news stories recently, a number of employers around the country have begun to pay both sides of the Social Security tax -- that is to say, pick up and pay the Social Security obligation of the employee. It then becomes a deductible expense on the part of the employer.

It reduces by some amount the employee's retirement income.

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1 I am advised that if all employers in the country did
2 that, it would cost the fund about \$6.5 billion. Obviously
3 they will not all do it, but inquiries from employers are
4 occurring, I understand, to find out if this is going to remain
5 a "loophole" in the law.

6 Mr. Chairman, I have discussed it briefly this morning
7 with Commissioner Ross and I would wonder if we could not have
8 him comment on this.

9 The Chairman: Mr. Ross?

10 Mr. Ross: Yes, sir.

11 Because there has been a lot of publicity attendant on
12 this kind of using this loophole, a good number of inquiries
13 have been made as to whether we think it will be closed or not.
14 It does have the effect of both reducing Social Security tax
15 revenues to the fund -- as Senator Nelson says, if all
16 employers did it, it would amount to \$6.5 billion. Very few
17 employers, I believe, have done it thus far. It would mainly
18 be major employers of a lot of people who would do it because
19 it would have to be computerized and the savings are relatively
20 small in the case of any individual employee.

21 You would really need a lot of employees to make it worth
22 your while.

23 The problem is that the employee winds up with less Social
24 Security coverage in the long-term.

25 The equity of the thing begins to get skewed if some

1 employers do it, and some do not.

2 We have been, in the administration, studying a relatively
3 simple proposal to fix this, which would be simply provide,
4 except in the case of domestic employment where I think an
5 exception should be made, a one employee-one employer
6 situation, you would include the amount of an employee's FICA
7 tax paid by the employe as taxable wages covered by Social
8 Security.

9 We have some draft language that would accomplish that.
10 What it would do, it would keep the situation, I think, on an
11 equitable, even keel for everybody if this were to happen.

12 We have talked about it with the staff, and you might want
13 their comments on this problem, I suppose.

14 The Chairman: What can you tell us about it, Mr. Stern?

15 Mr. Stern: Well, I have also seen articles in the paper
16 from time to time about how this is done. I would think that
17 you would want to try to prevent it from becoming widespread.

18 The Chairman: Do you want to offer an amendment, Senator,
19 on something to take care of that matter?

20 Senator Nelson: I have the amendment that the
21 administration proposed. Would it be appropriate to offer it
22 here?

23 Senator Dole: I do not have a copy of that.

24 Senator Nelson: We are talking about the amendment that
25 Commissioner Ross has just stated.

1 Mr. Ross: The principle that I just stated is carried out
2 in some draft language. If you would like that, I would give
3 it to your staff.

4 Senator Nelson: Is that the one sentence under proposal?

5 Mr. Ross: Yes, then there is an attachment which would
6 turn it into statutory language.

7 Senator Nelson: Does everybody have a copy of that?

8 Senator Dole: No.

9 Senator Nelson: I have copies.

10 I take it that the proposal does accomplish what you state
11 in one sentence on page 2. Include the amount of an employee's
12 FICA tax paid by an employer as taxable wages covered by Social
13 Security, except in domestic employment.

14 Mr. Ross: Yes, sir.

15 We would be happy to make sure that the staff here agree
16 with this as a technical matter, that it accomplishes that, and
17 only that. That is our belief that that is exactly what it
18 would do.

19 The Chairman: That will finance our health program. You
20 say it takes up \$6 billion?

21 Mr. Ross: It prevents you from losing \$6.5 billion.

22 Senator Nelson: Good try.

23 Mr. Ross: It would pick up some money.

24 What do we estimate is being lost already? We may be
25 using as much as \$50 million already. There is money in it

1 that is presently being lost because people are starting to
2 adopt these plans.

3 Senator Nelson: I suggest this be an amendment to the
4 Disability bill, which is part of the Social Security.

5 The Chairman: Which bill?

6 Senator Nelson: The disability bill, which is part of the
7 Social Security program.

8 The Chairman: All right. It can be offered. All right.

9 Senator Nelson: I propose the amendment as drafted by the
10 administration, shown on the third page, with the understanding
11 that the staff and the Commissioner will be sure that the
12 language accomplishes that specific limited purpose that is
13 stated on line one that I read.

14 The Chairman: All in favor, say aye?

15 (A chorus of ayes)

16 The Chairman: Opposed, no?

17 (No response)

18 The Chairman: The ayes have it.

19 Mr. Stern: That would be an amendment to the disability
20 bill, Mr. Chairman.

21 Senator Nelson: Is there any better place to put it?

22 Mr. Stern: No.

23 That is the Social Security bill.

24 Senator Nelson: That is what I have offered it as. Mr.
25 Chairman, I raise one minor point, because I do have to leave

1 -- or do you have a different order.

2 The Chairman: Go ahead.

3 Senator Nelson: All right.

4 Mr. Chairman, under the disability proposal we changed the
5 law so that the Secretary will issue standards and criteria
6 respecting disability. If the Secretary finds that a state
7 agency is substantially failing to make disability
8 determinations consistent with the speculation, the Secretary
9 shall, not earlier than 180 days following this finding,
10 terminate state administration and make the determinations
11 himself.

12 Now, if a termination occurs, you would then have state
13 employees who become Federal employees. Now, the question that
14 concerns me is to be sure that the state employees will become
15 Federal employees, or that state employees involve -- that
16 their rights are preserved.

17 I have an amendment that does not go as far as it should.
18 I have not had a chance to draft a more extensive one. I think
19 we ought to provide that the state employee's job rights are
20 preserved if they are Federalized, to the extent that they are
21 needed. It may be that you would not want to preserve a job
22 that is not needed, but if you are taking over two or three
23 hundred jobs in a state, the state employees ought to have the
24 first option on those jobs.

25 If, in fact, you need ten less -- I am not suggesting you

1 have language that requires the Federal government to keep the
2 total number, but I do not want it to be wide open as it is
3 under the law in which the Federal government would not have
4 any at all.

5 Senator Talmadge: What state employees are going to be
6 Federalized? It is the first I have heard of it.

7 Senator Nelson: That is what the bill provides. This is
8 from the bill, is it not, Mike?

9 This language, from your draft interpretation?

10 The bill also provides that if a Secretary finds that a
11 state agency is substantially failing to make disability
12 determinations consistent with his regulations, the Secretary
13 shall not, earlier than 180 days following his finding,
14 terminate state administration and make the determinations
15 themselves.

16 Am I correct, Mike, that that would mean that it would
17 then become a Federal administration of that disability law?

18 Mr. Stern: Yes, sir.

19 Senator Nelson: The employees that are now under the
20 state would be working as Federal employees, is that correct?

21 Mr. Stern: Federal employees would make a determination.
22 It might not be the same employees.

23 Mr. Ross: Could I raise a point?

24 Under present law, if the contract arrangement with a
25 state fails, there is always the residual possibility that the

1 Federal government has to go in and take over for the state
2 agency. That is the law now. All the bill does is carry that
3 concept over, but indeed, the thrust of the changes in the bill
4 to go to regulatory standards, performance standards, to try to
5 bring some harmony into the relationship are designed to make
6 it less likely that states will leave the program and turn it
7 over to the Federal government.

8 I know a good number of states have been anxious,
9 including Wisconsin, about the fact that they may not want to
10 do this program any more. This arose even before the new
11 approach was taken, and when you have to do that kind of
12 contingency planning, it left some level.

13 I want to make it very clear that we do not intend to try
14 to force Federalization. Indeed, what we are trying to do is
15 promote a more harmonious arrangement with the states, in the
16 interest of having them continue to do this work and to do it
17 in the interest of claimants and the American public better.

18 I think the record ought to be clear on that.

19 Senator Talmadge: I the Senator would yield further?

20 Senator Nelson: Yes.

21 Senator Talmadge: I am unalterably opposed to any effort
22 on the part of any Federal agency to Federalize any state
23 employee. The only exception would be the National Guard in
24 the event of an emergency.

25 Certainly, I do not want to give any Federal agency the

1 right to take over any state function at its discretion, any
2 time, under any conditions whatever, except in the emergency
3 where the National Guard would have to be called to active
4 duty, reserve order, to fight a war.

5 We have too much intrusion on the part of the Federal
6 government on the states now.

7 Certainly I would violently object to any effort on the
8 part of any Federal agency to try to Federalize any function of
9 the government.

10 Now, if some state agency wants to turn over some function
11 of their government to the Federal agency, I would not have any
12 objection. Certainly I would resist violently any effort on
13 the part of the Federal government to take over a state
14 function.

15 Mr. Ross: We share that view. It is really a question of
16 some of the states -- like Wisconsin has been having this kind
17 of reconsideration. The Governor there has been reconsidering
18 whether he wants to administer this program.

19 That tends to create anxiety in the state employees. They
20 then come forward with trying to do some contingency planning.
21 That is really the thrust of what Senator Nelson's amendment is
22 about.

23 I wanted to make clear that it is strictly contingency
24 planning. We do not expect, and are not at all interested, in
25 taking over state operations.

1 Senator Nelson: Let me pursue the point. I hope it would
2 not happen either.

3 You are trying to get some uniformity, which we ought to
4 have in state determination standards for disability.
5 Currently, is it not correct that that has worked out state by
6 state with the Secretary?

7 Mr. Ross: Right.

8 Senator Nelson: You really have 50 different standards or
9 50 different programs, a different one in every state. Is that
10 right?

11 Mr. Ross: To some extent, yes.

12 Senator Nelson: What you are trying to do, which I
13 certainly agree, to help the Secretary issue regulations
14 establishing nationwide standards on disability so that the
15 same people in the same circumstance in different states will
16 be treated the same.

17 Is that not what we are doing?

18 Mr. Ross: That is correct.

19 Senator Nelson: If this, under this bill as it came out
20 of the House and is pending here, the Secretary determines that
21 the state is not complying with those standards, the Federal
22 government would take over the administration, have the
23 authority to write.

24 Mr. Ross: We have that under the existing contracts with
25 each of our states, too. The dimension of it is not being

1 changed by the bill. That is the only thing I want to make
2 clear.

3 Senator Nelson: One more question. It was my
4 understanding from a news story I read -- I did not call the
5 Governor or pursue it with him -- the Governor of my state
6 expressed I guess a fairly positive intent from the way I read
7 it, to turn the administration over next year.

8 Maybe he will not. Maybe the story was not precisely
9 accurate.

10 A state may decide to say we want you to administer from
11 now on. Is that not correct?

12 Mr. Ross: That could have happened. That happens,
13 whether or not you change the law or not.

14 Senator Nelson: There is only one point I am trying to
15 get at here. If that should happen, I would like to be sure
16 that the state employees who then, if they become Federal
17 employees, are treated fairly.

18 I believe in H.R. 1, several years ago when the proposal
19 was the whole welfare program would be taken over, and all the
20 state employees, that their rights -- we had provisions in
21 there, I believe, to protect the rights of the state employees.

22 What I would like to suggest, I do not have language that
23 the staff draft some language that would protect the rights of
24 employees. I know it is a delicate question. I would not want
25 to mandate, if you only needed 120 of the state employees

1 ---not the whole 130, that you are mandated to keep 130. I
2 do think that the state employees who are there in the job
3 slots that are open should be filled by the state employees.

4 Senator Talmadge: If you would yield at that point?

5 Senator Nelson: Yes.

6 Senator Talmadge: If I understand you correctly, Mr.
7 Ross, you stated if the state did not assume this function, the
8 existing law gave the Federal agency the right to make the
9 decision. Is that right?

10 Mr. Ross: We would have to, because it is a 100 percent
11 Federally financed program.

12 Senator Talmadge: We do not use state employees to make
13 that decision, do you? You use Federal employees, do you not?

14 Mr. Ross: To make the determination?

15 Senator Talmadge: Yes.

16 Mr. Ross: No. It is done by the state disability
17 determination unit.

18 Senator Talmadge: You move in and take over state
19 employees to make a determination?

20 Mr. Ross: No.

21 What would happen, if a state like Wisconsin gives us
22 notice that it no longer wants to do this work, we would then,
23 as we started to do with Wisconsin, sit down with them and say,
24 "Look, you have got to protect the citizens of the state, the
25 claimants." We would sit down with them, put together a

1 team --

2 Senator Talmadge: What do you mean by putting together a
3 team? Do you then make Federal employees out of those state
4 employees?

5 Mr. Ross: No, not necessarily. No, not necessarily, sir.

6 Senator Talmadge: What do you mean, not necessarily.
7 Have you ever done it before?

8 Mr. Ross: We have never done it. That is why it is like
9 going into a tunnel you have not been in before.

10 What you do is you would sit down with the state people
11 and the Social Security people. We would figure out how to get
12 continuity while we get it turned over from the state to our
13 responsibility.

14 Senator Talmadge: Let me ask you. Suppose the Governor
15 of Wisconsin decides he wants to turn this function over to a
16 Federal agency and not retain it as a state function.

17 Mr. Ross: Right.

18 Senator Talmadge: I have no objection to that if the
19 Governor of Wisconsin sees fit to do so.

20 Then what do you do under those conditions. Do you hire
21 all those state employees and make Federal employees out of
22 them?

23 Mr. Ross: Not necessarily, sir.

24 Senator Talmadge: What do you do?

25 Mr. Ross: The first thing you have to do is sit down and

1 make sure that you do it in an orderly way with the transition
2 so that the people who need determinations made are protected.
3 You would have to work out a timeframe under which they would
4 continue to do that work, while we begin to either hire some of
5 those people or figure out some way to do it ourselves.

6 You know, you just cannot turn it on or off like a
7 lightbulb, on something like this.

8 Senator Talmadge: Has any state ever declined that
9 function and turned it over to the Federal government?

10 Mr. Ross: Not to this point in time.

11 Senator Talmadge: Have you heard from the Governor of
12 Wisconsin that he wants to turn it over to you?

13 Mr. Ross: We have heard that, but then he has also said
14 -- we have heard it both ways, that he wanted to and that he
15 did not want to.

16 Senator Talmadge: Has there been any communication, by
17 mail or otherwise, from the Governor of Wisconsin that he wants
18 to turn it over?

19 Mr. Ross: Yes, we have had some. I would be glad to
20 submit that for the record.

21 Senator Talmadge: Has he made that recommendation to you?

22 Mr. Ross: He may have withdrawn it, too. I am not sure
23 what the latest status of it is. I just do not have that this
24 morning. It has been turned on and turned off, in effect, as a
25 goal of the Governor.

1 Senator Talmadge: I have no objection to protecting the
2 rights of the state employees any time during your
3 reorganization. I am all for that.

4 But I want it crystal clear that no Federal function, at
5 any time, has the right to step in and intrude on a state
6 operation and make Federal employees out of them.

7 Mr. Ross: Could I just say that the House Subcommittee
8 was concerned about this, too, and the bill requires us, does
9 it not, to produce a study on how you would treat the
10 situation fairly from the standpoint of the state employees,
11 which I think is what Senator Nelson is concerned about, and at
12 the same time recognizing that you are dealing with an
13 extremely complicated transition.

14 You have all these Federal civil service laws and
15 requirements and the main thing everybody has to keep their eye
16 on in this is presuming continuity in the functions so the
17 claimants are treated fairly and equitably during the
18 transition. There are a lot of things to be balancing. I do
19 not think you can have automatic provisions that you can take
20 employees over there or that you want to take them over.

21 You are going to have to deal with it on an ad hoc,
22 sensitive, delicate basis.

23 We said to the House Subcommittee when they got into this
24 that we would be glad to try to develop some plans, that we
25 would then submit back for the Congress to see on how you would

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1 go about handling this contingency if it arises.

2 I personally hope that it will not arise, and I do not
3 expect it to arise.

4 Senator Nelson: I hope so, too, but let me read from the
5 Ways and Means Committee report that accompanied H.R. 3236 in
6 which it was acknowledged, if that bill is enacted, "There is
7 more likelihood that some states may decide not to participate
8 under the program, or the Secretary may determine that a state
9 is not complying with the regulation requirements promulgated
10 under this legislation."

11 All they are saying is that there is more likelihood that
12 the Secretary might decide they are not complying and take
13 over, or a state like mine, or another, may decide to turn it
14 over.

15 The only point I am concerned about in that contingency is
16 that I want to make sure that we have some language that
17 protects the employees, that they have the first options on
18 these jobs.

19 I do not think it is fair in the circumstance.

20 Mr. Ross: The House bill does have some language that
21 does that in connection with calling for the study.

22 Senator Nelson: The language only calls for the study.

23 Mr. Ross: It does express the goal that you are saying of
24 dealing with the state employees fairly.

25 Let me just say, my own feeling is that the thing that is

1 most likely to lead to a state turning this over to us is not
2 the change from a contract to regulations, which will be worked
3 out with the states, but the fact that the states have very
4 similar problems to the Federal government in not wanting
5 additional employees.

6 That means, with a 100 percent Federally financed program,
7 a Governor could well look and say, this is essentially a
8 Federal program already. You are paying for all these
9 employees. They ought to be on your rolls, not my rolls. If I
10 have employment ceilings, I would sooner use those for programs
11 that are more state programs than this.

12 I think it is that kind of problem in today's governmental
13 climate, more than the change in the way we are going to work
14 out the partnership with the states that would lead to this. I
15 am hopeful that we will have a new and better partnership with
16 the states by going through the reforms in this new bill.

17 Senator Talmadge: If the Senator would yield further,
18 what are you talking about, when you say a state function 100
19 percent financed by the Federal government?

20 Mr. Ross: We provide 100 percent financing for the state
21 aspects of the disability determination process.

22 Senator Talmadge: What disability determination?

23 Mr. Ross: The ones we are talking about here, when they
24 determine whether somebody is disabled under the medical
25 program.

1 Senator Talmadge: State or Federal employment?

2 Mr. Ross: State employment.

3 Senator Talmadge: State only.'

4 Mr. Ross: State only. 10,000 employees.

5 Senator Ribicoff: What you are doing is delegating a
6 Federal function to the state and they are acting on behalf of
7 the Federal government in fulfilling that function.

8 Mr. Ross: You could look at it that way, yes, sir.

9 Senator Ribicoff: Basically, they are carrying on as
10 delegated. Do you not have a problem here, with Senator
11 Nelson, too? I am sympathetic with what he is trying to do,
12 but how does this fit in with the Civil Service laws?

13 Mr. Ross: That is a problem.

14 Senator Ribicoff: That is what you are going to have to
15 determine, how they fit into the Civil Service laws, and if
16 there is any way of giving these employees some priority in
17 employment under the Civil Service laws. I do not know.

18 Mr. Ross: The House bill provides that any takeover plan
19 should be submitted in advance to Congressional committees
20 dealing with Civil Service. That is really a very major set of
21 complications that I think that you cannot really cut away at
22 in advance of a particular plan with a particular state.

23 Senator Dole: Mr. Chairman?

24 The Chairman: Yes.

25 Senator Dole: I think we have had the same problem. I

1 think there are some ASC employees where you had the Federal
2 takeover of grain inspection. We had state grain inspection
3 taken over by the Federal government.

4 We provided for some protection.

5 I certainly think we all support what Senator Nelson
6 proposes to do to not disadvantage some state employee in the
7 process and to somehow, as he indicates, not suggest that
8 everyone must be retained, but that we do not arbitrarily
9 prejudice his rights to employment if it changes from a state
10 to a Federal function.

11 The Federal employment status.

12 Whatever happens I think we should support Senator
13 Nelson's effort.

14 Senator Nelson: If they are qualified they ought to have
15 a job against anybody else. We do have the law within the
16 Federal government, if a Federal government employee is
17 terminated, he can have any job in the Federal government ahead
18 of anybody else in the Civil Service, if he is qualified for
19 the job.

20 Mr. Ross: The House Report contains language like that
21 already. If you want to put that in your report, or reflect it
22 in the statute, the House is on record to that end already.

23 Senator Nelson: Mr. Chairman, I know I have taken -- you
24 have given me time on two matters here. I would just like the
25 opportunity to see if we could work out a proposal which, if it

1 is acceptable, it could be handled on the Floor. I do not want
2 to sit here trying to discuss the details and take up all the
3 time of the Committee.

4 Is that all right with the Chairman?

5 The Chairman: Fine.

6 Senator Nelson: All right.

7 The Chairman: Well, now, let's talk about health
8 insurance.

9 Mr. Stern: Mr. Chairman, there was a matter that the
10 Committee asked the staff to come back on in the area of
11 disability. This is in response to Senator Wallop's proposal
12 about coordinating Social Security benefits with other benefits
13 given on account of disability.

14 You do have in your packet a document called—"Coordination
15 of Disability Insurance and Other Disability Benefits."

16 For your consideration, this approach would say, you take
17 the limitation that you have agreed to for Social Security
18 disability benefits, namely that the family benefit cannot
19 exceed 85 percent of the worker's average indexed earnings, or
20 if lower, 160 percent of his basic individual benefit amount.
21 That gives you a particular dollar amount for each worker, and
22 then you would say that the sum of the worker's other benefits
23 from public programs based on disability, plus the Social
24 Security disability benefits together could not exceed that
25 number, and if it did, you would simply reduce the Social

1 Security disability benefits. You would never reduce it below
2 zero, but you would reduce it so that the combined total would
3 be that.

4 That is the basic approach. We would be happy to go into
5 it more if you want to.

6 Senator Dole: I think, Senator Ribicoff, I support what
7 I think Senator Wallop is trying to achieve. I do see some
8 rather complicated areas we have not touched upon. There have
9 been no hearings on it.

10 Take, for example, disability benefits that veterans
11 receive. If they were paid in a lump sum at the time of their
12 discharge for that disability, it would not be an issue, but
13 they are paid on a monthly basis, and I assume they would be
-14 impacted like everybody else. - They are not excluded, are
15 they?

16 Mr. Stern: That is correct. They are not excluded.

17 Senator Ribicoff: If the Senator would yield, we are
18 dealing with a very complex problem with many ramifications
19 and you are dealing with the most severely disabled group in
20 American society.

21 My understanding is that GAO is in the process of a
22 completing a report on workman's compensation, on the cap, on
23 the offset. They are supposed to get their report back in
24 December. My understanding is that the Ways and Means
25 Committee is going to hold hearings immediately after the GAO

1 report.

2 I would hope that the Finance Committee would request the
3 GAO to extend the focus of their report beyond workman's
4 compensation to encompass the whole galaxy of problems that
5 Senator Wallop is talking about.

6 So I think that we have a very complex problem that is
7 going to cause a lot of problems, Mr. Chairman. No hearings
8 have been held. They are very complex, and I would move that
9 we defer action on this particular phase until the GAO report
10 comes in December.

11 But interim, ask GAO to extend their investigation
12 without cutting short what they are doing now or extending
13 what they are doing now in workman's compensation so that we
14 can understand all the complexities and ramifications of what
15 we propose to do here.

16 Senator Wallop: Mr. Chairman?

17 The Chairman: Mr. Wallop.

18 Senator Wallop: It is not my desire to add to the
19 complexities, or anything else, but still I feel compelled to
20 point out to the committee the gross inequity that exists with
21 this one category of workers.

22 If Senator Ribicoff wants to do that, I do not really
23 object to doing that. I think it is a responsible way to go.

24 I would suggest as an interim that we treat all workers
25 alike and adopt my amendment until we deal with the whole

1 problem in total.

2 One of the reasons why I suggest that is you are building
3 at this time a remarkable constituency in opposition to any
4 change, and it is still going to leave these people who are
5 treated unfairly as a class of workers out in the cold.

6 The Chairman: Let's review the bidding on the Wallop
7 amendment.

8 Tell us who was involved with benefits in the Wallop
9 amendment, and how much that would cost -- the original Wallop
10 proposal.

11 Mr. Stern: The original proposal would repeal that
12 provision of law which now limits disability benefits to
13 persons who also get workman's compensation. For that group,
14 it would cost an estimated .3 of a percent of payroll.

15 The Chairman: How much.

16 Mr. Stern: .3 of a percent of payroll. That averages
17 out \$300 million although the cost over the next five years is
18 estimated to average \$200 million. It is something a little
19 less than \$1 billion over the next five years, according to
20 CBO.

21 The Chairman: \$200 million a year?

22 Mr. Stern: It starts out a little less than that, winds
23 up a little bit more.

24 Senator Wallop: There are different opinions as to what
25 that is. The administratoin's view is different as to the

1 cost than CBOs. I think the administration, or the Social
2 Security Administration's figure, was about \$100 million.

3 Mr. Ross: That was just for the first year, but the
4 overall, long-term payroll effect averaged out to the \$300,
5 .03, less in the first year.

6 Mr. Stern: Under the administration's estimate it looks
7 like about maybe \$800 million or so over the five years
8 instead of a billion.

9 Senator Wallop: The highest the administration gets is
10 \$170 million. That is in '84.

11 Mr. Stern: Maybe \$750 million. It is a rather expensive
12 provision, as amendments go.

13 Senator Wallop: I fully appreciate that. That is why I
14 like the other way better, because I think that people with
15 public benefits should be treated the same, that one public
16 benefit be offset against the other.

17 The fact is that these people on workman's compensation
18 have no choice about being on that. That is their agreement.

19 As a matter of employment, which they use as substituting
20 their right to sue and recover damages.* If they sue, were
21 able to sue and recover damages, it would not be offset. Is
22 that correct?

23 Mr. Stern: My understanding is workman's compensation is
24 in lieu of having a claim against your employer.

25 Senator Wallop: In lieu of, but if a claimant was able

1 to sue an employer and get a benefit, that would not be offset
2 but workman's compensatin is. It is the only class of an
3 employee in the country who has his benefits directly offset.

4 Senator Dole: What if he took a lump sum settlement?

5 Senator Wallop: A lump sum settlement? That is how this
6 came to my attention.

7 In my campaign, I was talking with a man who had 40 years
8 working in a mine without a time loss, accident. Fell off a
9 high wall, broke his leg, was unable to work. He had children
10 in college and everything else, got his lump sum benefit and
11 found his disability payment was diminished by the amount of
12 that lump sum beneit.

13 He managed to get his children through college, but it
14 was a surprise to him, and I think it comes as a surprise, a
15 bitter surprise, to most people on workman's compensation, to
16 find out that their state's fund is being used primarily to
17 assure the liquidity of the disability fund.

18 Those states who have opted to go the other way and
19 reduce workman's compensation benefits by the amount of the
20 Social Security payment primarily are taking care of their
21 employers, and their employer's contributions and his own
22 fund within the workman's compensation.

23 The Chairman: Here is where you find yourself, if you
24 take that route, which is why we moved in the other
25 direction --

1 Senator Wallop: I approve of the other direction, Mr.
2 Chairman.

3 The Chairman: Right.

4 You see, we started off with the state program of
5 workman's compensation, a good program, all right? To come
6 along with a Federal program for disability -- well, when you
7 add the two together and they are paying these premiums over a
8 long period of time, we say, all right, you would be
9 receiving, let's say, 85 percent. He would not receive more
10 than 85 percent of what he had been earning under the
11 disability. That does not take taxes into account, so that 85
12 percent figure might really be more like 90 to 95 percent what
13 he would have been making working, that he could be getting
14 under the disability program, all right?

15 If you add the workman's compensation -- let's assume he
16 is getting 60 percent of the amount under the workman's
17 compensation. Adding 85 percent to the 60 percent, you get
18 245 percent, so if a guy takes the job, he is going to lose
19 this 85 percent right off, if he takes a job doing something.

20 So really he cannot very well afford to go to work,
21 because he would lose money by going to work.

22 We have some notable cases where people suffer disability
23 -- I recall one in my home town. A guy working on the
24 railroad hwo lost a hand.

25 He was awfully sorry for himself for awhile, but he had

1 to find something. He could not work on the railroad any more
2 with one hand, not doing the kind of work he did. So he was
3 found to be totally and permanently disabled. He probably got
4 a lump sum settlement, or something.

5 This fellow then went to work, started himself a little
6 dry cleaning plant. He could not do the dry cleaning, but he
7 could hustle business for that little dry cleaning
8 establishment. He winds up being one of the most successful
9 men in Baton Rouge, a very wealthy and successful man, because
10 it all started when he lost his hand working out there on the
11 railroad.

12 Under our way of doing business here now, A, he would be
13 paid more than 100 percent of what he had been making working
14 on the railroad. You might say the result would be he could
15 not afford to go to work and start a small business so he
16 would be dependent on the government for the rest of his life.

17 So that is not good.

18 The Senator says that the problem is if you are going to
19 treat -- if you are not going to have these people making more
20 than 100 percent of what they made working, you ought to do
21 the same thing with regard to the others. My reaction is, I
22 guess that is fair.

23 It gets a little touchy when you get into veterans
24 benefits. The veterans organizations ---hold on just moment.

25 Senator Talmadge: If you would yield from that point, I

1 heard from some of them this morning, of course, and
2 yesterday. Of course, when you have a veteran who is
3 disabled on a battlefield, he is compensated for serving his
4 country in time of war. I can understand how that could be a
5 valid exception.

6 I do not know if fighting in a war is normal employment,
7 but if we go that route, I do think we ought to try to
8 coordinate these benefits wherever we can. I think we ought
9 to make an exception for disabled veterans, because they are
10 being paid for loss of something during combat in a war, and I
11 think that is different from normal employment.

12 Senator Dole: Mr. Chairman?

13 The Chairman: Mr. Dole.

14 Senator Dole: I agree with Senator Talmadge on that
15 area. Also, of course, you have those who have a VA pension
16 because it is based on need and over 65. You have the GI bill
17 ---whether or not that would be considered vocational
18 rehabilitation. That is just in the veterans areas.

19 Then, of course, I assume there are others who would have
20 some. I do not quarrel with what Senator Wallop wants to do,
21 but it seems to me that we look at black lung, railroad
22 disability, Federal state and local civil service and Federal
23 worker's compensation.

24 It is a rather massive area that we would simply
25 determine here without any hearings by virtue of an amendment.

1 It does not address the problem that he raises. What do
2 you do in the meantime for workman's comp? Do you compound
3 the problem by adding that to the pot, or do we proceed with
4 hearings, as suggested by Senator Ribicoff?

5 I do not know whether the administration has a view on
6 this or not.

7 Mr. Ross?

8 Mr. Ross: Yes.

9 We have been spending the time that we have had since
10 this came up trying to study the relationship between the
11 basic disability program and these others, and generally we
12 are very sympathetic to the Committee's desire to better
13 coordinate these.

14 The problem that we are having is that there are a
15 tremendous number of programs and getting the data to really
16 figure out who is affected and how is extremely difficult and
17 we feel that we share Senator Ribicoff's sentiments that more
18 study is needed to make sure that you know precisely is being
19 affected and how, and how you really relate this number of
20 programs.

21 We do feel, in the meantime though, that we would not
22 like to see the workman's comp offset provision changed,
23 because that is the right direction, to better coordinate
24 these things.

25 Our advisory counsel will be reporting that they think we

1 ought to be moving in this direction.

2 It seems to me it would be a step back from that
3 direction to give up the coordination we have already achieved
4 between those two programs because it is going to take a
5 little more time to figure out how to coordinate with the rest
6 of the programs that ought to be coordinated with.

7 The direction that you are trying to reach for is
8 obviously the right direction. It has to be done. It is just
9 a question of time, to get the work done to do it.

10 Senator Ribicoff: Mr. Ross, I am just curious. I am
11 assuming GAO has been getting its information and statistics
12 from you. Are they not from your department?

13 Mr. Ross: In part, I suppose what you are talking about,
14 programs that we did not administer when you are talking about
15 things like railroad, civil service benefit programs, veterans
16 programs, black lung, workman's comp --

17 Senator Ribicoff: Basically, you do not have the back-up
18 to advise because they are not programs within your
19 jurisdiction.

20 Mr. Ross: We do have a research capacity to see how we
21 relate to these things.

22 Senator Ribicoff: That is why I thought that GAO was
23 making a study on workman's compensation that we do not ask
24 them to extend it concerning the problems of the Wallop
25 proposal and to keep on their study and report back to the

1 Finance Committee.

2 Would that be of help to you?

3 Mr. Ross: It would be of great help to us, yes, sir.

4 Senator Wallop: Mr. Chairman, could we have some
5 assurances that the Committee will do its best to address this
6 inequity? I really prefer the direction the Committee almost
7 went. I can see so clearly the political battalions being
8 drawn into place while we study it.

9 You know, I am not surprised that the veterans contacted
10 you or anybody else on the Committee. I think it is only a
11 matter of time.

12 Probably the time is already passed, the black lung
13 people, the civil servants, the railroad retirement people --
14 there is a lot of heavy political artillery out there which
15 would tend to perpetuate the circumstance which discriminates
16 against one class of American workers.

17 It is going to take a lot of political courage to move in
18 the direction that Mr. Ross is talking about. I just think
19 that somehow or another we have to be assured that we will
20 make an attempt to face up to that, in the earliest possible
21 moment when these studies are available.

22 Senator Ribcioff: Which subcommittee is that? Senator
23 Baucus, or is that Senator Boren's subcommittee?

24 The Chairman: Which subcommittee has jurisdiction over
25 that?

1 Mr. Stern: The Social Security subcommittee, I would
2 think. What you are talking about is reducing the disability
3 insurance benefits. It is coordinating disability insurance
4 with other benefits.

5 What you actually touch is the disability insurance
6 benefit itself.

7 Senator Nelson's subcommittee.

8 The Chairman: Senator Nelson's subcommittee?

9 Mr. Stern: Yes, sir.

10 Senator Dole: Who is ranking?

11 Mr. Stern: It is Senator Danforth.

12 The Chairman: If that is agreeable, then why do we not
13 do that? We will just ask the Committee to hold hearings on
14 it and bring a recommendation in.

15 Mr. Stern: The other three Senators are here, Senator
16 Baucus, Senator Ribicoff and Senator Packwood.

17 Senator Dole: Senator Packwood?

18 Mr. Stern: Yes.

19 Senator Wallop: It is going to be a very difficult thing
20 to take up.

21 Senator Dole: It will be difficult to take up, and
22 difficult to report.

23 Senator Wallop: Frankly, we think it will be difficult
24 to take up.

25 The Chairman: We will ask that Subcommittee to hold

1 hearings on that matter, schedule hearings and bring us their
2 recommendation.

3 Senator Dole: When is the GAO report due?

4 Senator Ribicoff: In December.

5 Senator Dole: Some time after that, I assume?

6 Senator Ribicoff: Right.

7 The Ways and Means Committee have agreed, assuming they
8 get the report, to hold their hearings.

9 Senator Wallop: Your motion is to ask GAO to extend the
10 scope of their study?

11 Senator Ribicoff: That is right, to ask GAO to extend
12 it, and see the complications and feasibility and
13 ramifications of extending it to where you want to go, Senator
14 Wallop, which I think we ought to ask them to.

15 Senator Wallop: I would appreciate that. I would just
16 serve notice on the Committee that in the absence of anything
17 else, I do not like to be a spender. I feel badly about this
18 one group of American workmen who had no choice as to whether
19 they come under it and are severely discriminated against.

20 The Chairman: Well, then.

21 Mr. Stern: Mr. Chairman, we have one small matter to
22 raise on this bill. The Committee has agreed to a provision.
23 It was one of Senator Talmadge's provisions that relates to
24 safeguarding information, and the provision was made
25 applicable not only to Aid to Families with Dependent

1 Children, but also to Medicaid and social services.

2 This would be the only amendment in the entire bill that
3 is not within the jurisdiction of the Ways and Means
4 Committee, but rather, the House Commerce Committee, and the
5 staff would simply suggest that you take the Medicaid part of
6 this bill and instead put it in the other bill that you have
7 already acted on, or ordered reported, that has Medicaid
8 amendments in it.

9 It would be the same amendment, just put it in another
10 bill to avoid any jurisdictional problem in the House.

11 The Chairman: To avoid the jurisdictional problems.

12 Mr. Stern: Yes, sir.

13 The Chairman: Without objection, so agreed.

14 Mr. Stern: Thank you.

15 The Chairman: What else do you have now?

16 Mr. Stern: Health insurance, Mr. Chairman.

17 The Chairman: All right.

18 Senator Dole: I think the place we left off was a
19 meeting with the staff and the insurance representatives on
20 that group of five million people who were not eligible for
21 Medicaid but were low income.

22 The Chairman: Will the staff tell us what suggestions
23 you came up with since yesterday?

24 Mr. Constantine: Yes, sir.

25 We were working last evening and yesterday afternoon on a

1 modified version essentially based upon the
2 Dole-Danforth-Domenici approach to provide a subsidy of the
3 purchase of private health insurance for people who have
4 income, but where it is not earned income.

5 For example, the retired policeman who is in his 50's who
6 has an income of \$10,000, that kind of thing, that would
7 otherwise not be eligible fo support.

8 We have this paper entitled "Possible Appraoch" which has
9 been handed out to the Committee. I did want to stress, Mr.
10 Chairman, that in the numbers that we give there that those
11 are purely tentative and for illustrative purposes and the
12 staff was not wed to any of those. It was just simply one
13 approach, given the shortness of time that might indicate a
14 way to do it.

15 What this deals with, essentially, are people who are
16 ineligible for Medicaid ordinarily and above the Medicaid
17 eligibility levels. It does not deal particularly with the
18 people who are below Medicaid eligibility levels and who are
19 low income, but you can discuss that after you get the segment
20 of the population --

21 Senator Dole: How many in this group?

22 Mr. Constantine: In this group here -- Jim, do you have
23 an estimate?

24 Dr. Mongan: If you can give us a minute.

25 Mr. Constantine: A fair number, Senator. Certainly

1 several million.

2 Senator Ribicoff: I would hope, Mr. Chairman, that after
3 Jay submits his thinking on this, that we hear from the
4 insurance industry and we hear from Dr. Mongan too, because I
5 think that we have got a very, very complex situation and it
6 will be a miracle if we could decide this today, and I think
7 this is an educational process.

8 The thought I have is that the Dole approach is an
9 excellent one, but the great dilemma in the Dole approach is
10 what do you do with the people in the lower levels of
11 subsistence on Medicaid or welfare? How do you handle them
12 through the private insurance?

13 Obviously you cannot take those people and ask them to
14 buy insurance or to make a choice of carrier. Then you have
15 the Texas experiment. That, I think, is worth finding
16 something. How does the Texas proposal work, where they went
17 and had it bid out, I believe, to private insurance companies?

18 I do not know how the Texas approach worked. I
19 understand it worked fairly well.

20 Mr. Constantine: Senator, essentially, Texas is the
21 administrator of the Blue Cross, Blue Shield plan. It
22 essentially administers Medicaid on a cost-plus basis for the
23 state.

24 Senator Ribicoff: Through private insurance?

25 Mr. Constantine: They do not purchase private insurance.

1 Senator Ribicoff: They could. Could Texas buy private
2 insurance for the people they covered and do it on the Dole
3 approach?

4 Mr. Constantine: Yes, sir, they could, and they could do
5 it under present law, if they chose to. The dilemma that the
6 states have in purchasing private insurance, even though it is
7 authorized for their Medicaid population, is people come on
8 and off the rolls frequently, a lot of turnover on the welfare
9 rolls.

10 Secondly, it generally is more costly for the state to
11 buy regular, private health insurance because the states have
12 controls on their programs where the private health insurance
13 does not.

14 For example, in paying physicians most states have
15 negotiated fee schedules. They may pay their Medicaid
16 recipient \$7 or \$8 for an office visit, where the insurer
17 would allow \$12 or \$15.

18 Those kinds of cost differentials operate as well.

19 The state also has different payment rates, often for
20 hospitals, than the insurers do.

21 So apart from the variability of the population, the
22 Medicaid population they have, which makes determining who you
23 are paying for at a given point in time difficult, they often
24 pay a considerable lower rate than when an insured has bought
25 private insurance. It would definitely cost them more money.

1 Senator Ribicoff: Somewhere along the line with what you
2 are doing you are going to have to address the problem of cost
3 controls. Are we not, somewhere along the line?

4 Mr. Constantine: Yes, sir.

5 Senator Ribicoff: When you come to that problem, do we
6 not have to leave this open? You may find that with the cost
7 control you could achieve what you now say the states cannot
8 do. You could achieve it through this system, when we get
9 though discussing it, could we not?

10 Mr. Constantine: Yes, sir.

11 Actually, if those operate well, the state would have the
12 incentive to purchase the coverage.

13 Senator Ribicoff: You see, that is why the Dole
14 approach, if it were combined with similar costs and the
15 controls you now have on Medicaid, it may be a very good
16 solution, but we do not know until we find out what we are
17 going to do with the cost control bill.

18 Mr. Constantine: Senator, did you want me to describe
19 this portion of it, which essentially is -- by the way, a fair
20 number of people here in the groups we are talking about are
21 potentially eligible for Medicaid because of the spin-down
22 provisions in many states.

23 For example, in a state where you have a \$5,000
24 eligibility level today for a woman who is separated or
25 divorced with two children and she is hospitalized and has a

1 hospital bill, let's say, of \$4,000, after the first \$3,000 in
2 expenses, assuming an income of \$8,000, the state picks her up
3 under the spin-down.

4 This approach would relieve the states of a lot of
5 spin-down problems and keep a lot of people from going on to
6 Medicaid through that spin-down approach and avoid a lot of
7 the expenses of the spin-down.

8 The administrative costs are horrendous, Senator. The
9 administration estimated under its original proposal that the
10 administrative costs primarily due to the spin-down were \$2
11 billion a year which seems like a lot of money relative to the
12 benefits being paid out under this approach.

13 Again, I want to stress that these numbers are open.

14 What we would suggest for your consideration is
15 essentially a subsidized premium approach for families who are
16 not employed who are low-income. Low-income for purposes here
17 is defined as a family or individual with income of less than
18 \$14,000 a year, because that is the break point that you use,
19 with the 25 percent limit on employed.

20 What we were suggesting is that if you have a family or
21 individual with income less than \$8,000 a year that the
22 premium subsidy would be 75 percent of general revenues and
23 then on a scaled basis, going up to a maximum of 50 percent
24 Federal subsidy for those with incomes above \$10,000, \$10,000
25 or more, but less than \$14,000.

1 Administratively, it could be reasonably simple in terms
2 of the individual when they apply for the coverage. It just
3 indicates where they are in their income. The approved
4 insurer just applies for the subsidy to the Treasury on that
5 rather than having the low-income person coming up with the
6 front money, which is often difficult.

7 Additionally, we believe that many states would find it
8 advantageous to pay the premium, the nonsubsidized share for
9 people who are within a reasonable range of the Medicaid
10 eligibility levels, so that once they have spent down
11 catastrophic picks them up instead of the state Medicaid
12 program.

13 We would also suggest to the committee for its
14 consideration, while the maximum deductible under catastrophic
15 is \$3,500 that you consider putting a minimum deductible of,
16 say, \$2,000 for a number of reasons.

17 One is if you do not do that, the states would have a
18 good deal of incentive to reduce their Medicaid eligibility
19 levels once the individual has incurred 25 percent of income,
20 they shift over to the catastrophic. You keep dropping those
21 levels to \$3,000.

22 For example, an individual with an income of \$3,000 would
23 be covered after \$350 of expense. The state would only have
24 liability on the first \$350.* It was a practical problem in
25 thinking about the Committee's decision for the employed as

1 well.

2 We had problems in counting income if you use the prior
3 year's earnings, what earnings do you count? Here is someone
4 out of college who goes to work October 1 and has income for
5 only one-fourth of the year. They report income of \$3,000 and
6 the deductible is set at \$750 for that person.

7 Unless you have a procedure for projecting ahead, IRS is
8 not in the means test business to make those kinds of
9 judgments. Or you have the woman who starts working December
10 1 and earns \$500 and continues working. What is her
11 deductible?

12 Those kinds of counting of income, the people who work
13 for multiple employers ---it becomes a very awkward thing, and
14 by having a minimum deductible, you screen out an awful lot of
15 the administrative problems as well. We are just suggesting
16 that for consideration.

17 The minimum deductible of \$2,000 would essentially be the
18 deductible amount which would be payable by an individual who
19 had an income of \$8,000 under the Committee's original
20 decision. Someone employed making \$8,000 under your original
21 decision would have a deductible of \$2,000.

22 What we are suggesting is that that would be the minimum
23 deductible for both employed and unemployed to avoid a lot of
24 accounting problems, earnings computation problems and
25 projection, as well as any incentive to states to lower their

1 Medicaid deductibles and shift over to this program.

2 There is an adjustment. We did not get into it in the
3 discussion on the catastrophic before. We think it is very
4 important, and the insurers have no problem with it. It
5 automatically adjusts the premium for someone who is an
6 individual, two-person or family, that is a low-income
7 couple.

8 What we suggested for the catastrophic health insurance
9 is that there be a three-way system, individual, two-person
10 family, two-person rate and a family rate.

11 The two-person rate, for example, would be lower for a
12 woman with a child or a couple than in many cases where you
13 just have rates based on an individual or family, two-person
14 families under that structure who pay a very heavy premium
15 today. We would suggest that for the Committee's
16 consideration as well that all the premiums be based on
17 individual, two-person or family rate structures.

18 Additionally, Mr. Chairman, we would also suggest that
19 the Committee consider -- we will write it up for you -- the
20 requirement that where an individual or family member is
21 covered under catastrophic health insurance at the time of the
22 onset of the disability, disabling or long-term illness, that
23 is a catastrophic illness, kidney failure, or an illness that
24 is so disabling that ultimately they become eligible for
25 Medicare, that the catastrophic insurance be primary, that the

1 Medicaid coverage be residual in those circumstances where
2 somebody becomes eligible for Medicare as a disabled
3 individual, either in the end-stage renal disease program or
4 under the regular Medicare program, that Medicare
5 automatically pay the premiums for that individual.

6 I would like to explain that.

7 Senator Dole: Does that address the question raised by
8 Senator Long yesterday?

9 Mr. Constantine: In part it does, sir. Let me explain
10 that, because it would result, in the long run, in saving the
11 Medicare program billions and billions of dollars and giving
12 you some more discretion in terms of what you want to do in
13 this bill.

14 Today when someone is employed and has a kidney failure,
15 renal failure, at the end of three months, we deem them
16 disabled for Medicare purposes and Medicare picks up for those
17 people. They are subject to the deductibles of coinsurance.

18 Our average cost for those people amount to \$25,000 a
19 year. For some it is considerably higher.

20 What the staff is suggesting, if that failure occurs,
21 when they are covered under the catastrophic health insurance
22 and you have continuity of coverage that they are still
23 eligible for Medicare. Medicare would assist in meeting the
24 cost of the first \$3,500.

25 The deductible, as it does today, and that the

1 catastrophic health insurance will pick up after \$3,500.

2 Similarly, for someone who goes on the disability rolls
3 under Social Security today, we picked them up under Medicare
4 two years after the onset of disability. We are saying once
5 again, under those circumstances where the person is eligible
6 for catastrophic health insurance, to moderate the Federal
7 cost and the cost of Medicare, that Medicare automatically pay
8 the premiums for catastrophic insurance for that individual,
9 that we only fill in through Medicare the amounts below the
10 deductible, the residual amounts, in as much as under the
11 catastrophic plan you have already agreed that the
12 catastrophic coverage must provide at least the same types of
13 benefits that Medicare does.

14 The Chairman: I think you need to put that on the
15 blackboard.

16 Mr. Constantine: We will put it on a chart for you.

17 The Chairman: Put it on the blackboard. We ought to see
18 a diagram of something you can look at to explain it rather
19 than just trying to explain it verbally.

20 You explained it to me previously and I am still having
21 difficulty getting the picture. If you put a diagram up
22 there, I could understand it.

23 Senator Ribicoff: Another thing, Mr. Chairman, I am just
24 curious. You worked all day with members of our various
25 staffs. Did you work with them in putting this together, or

1 is this your own brainchild?

2 Mr. Constantine: This came to us last night when we were
3 going over some things on this paper about 8:30, and we
4 discussed it. It had not been resolved by the Committee.

5 Senator Ribicoff: Did you discuss it with our individual
6 staffs?

7 Mr. Constantine: Briefly with some staff members this
8 morning.

9 Senator Ribicoff: That is a problem. Yesterday, I do
10 not blame you because time was short. Here is a matter that
11 many of us are concerned about and we sort of delegate a job
12 to our individual staff members and the insurance group and
13 HEW to come up with a proposal. Now Jay comes with this
14 proposal which, I could gather, is his proposal and not the
15 analysis made by our individual staffs, HEW and the insurance
16 industry.

17 We are not going to be advised, or have the back-up,
18 unless the proposal that we have have also been gone over with
19 our individual staffs.

20 It would save an awful lot of time.

21 Mr. Constantine: Senator, we are raising it now. We are
22 not asking for a decision. We will write it up for you with
23 illustrative diagrams. I just wanted to point out that that
24 is an approach that could give the committee considerable
25 savings in the existing programs and is consistent with your

1 desire to use private health insurance.

2 Senator Ribicoff: You have a problem of procedure. All
3 of us try, and I think we succeed, in picking very able men
4 and women in these complex fields to work with us on a
5 day-to-day basis. We rely on them, we trust them, and we
6 assume that when we ask you to work with them it is for the
7 good of the Committee, as well as ourselves individually. It
8 is not very helpful when you suddenly spring on the committee
9 a proposal that is yours, never having gone over it with the
10 individual members of our staffs.

11 That leaves a vacuum for us. It uses up a lot of time,
12 because we are going to have to go back to our individual
13 staffs where we do our brainwork with them.

14 This is what bothers me in this proposal. It may be an
15 absolutely perfect proposal.

16 Mr. Constantine: Senator, what we want to do was raise
17 it. We will draft it up and outline it for you and submit it
18 back. We are just raising it for the Committee's
19 consideration, not for a decision in any way at this point.
20 We will bring it back to you.

21 The Chairman: I do not think I had a staff member there.
22 As far as I am concerned, you can just go ahead and say it to
23 me.

24 Senator Bentsen: I agree. You do not have to clear it
25 with my staff for me to listen to what you want to present. I

1 want to hear your ideas.

2 You may consult with staff.

3 The Chairman: I do not at all object. It is perfectly
4 all right for everybody to have time to think about it, but my
5 understanding is you thought you came up -- you thought about
6 9:00 last night it was a good idea. It hit you, even if it
7 hit you in the middle of a dream last night. You think you
8 have a bright idea.

9 Mr. Constantine: It is all a dream, Mr. Chairman.

10 The Chairman: It is all right to say it, I think.

11 Senator Dole: Does the Administration have any comment
12 on it?

13 Dr. Mongan: Yes, I would like to make a few comments,
14 Senator, if I could. Basically we just thought this morning
15 in fairness to Jay it did reflect some conversation we had
16 yesterday afternoon about some difficulties that had arisen in
17 the conversations that we had been having in the earlier part
18 of the afternoon.

19 Basically my preliminary impression is in fact it is a
20 constructive contribution. One of the reasons I say that is
21 that it bears some interesting similarities to a provision
22 which we have within our own bill which would essentially have
23 allowed people to purchase a policy with their \$25 deductible
24 from our public program.

25 So, as I say, this has some similarities to that.

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1 The major point I would want to emphasize is that we do
2 view it constructively. We do not view it as a substitute for
3 other improvements that would have to be made with respect to
4 the very low-income population not eligible for Medicaid, but
5 in combination with some of those improvements, in combination
6 with some of the things I mentioned yesterday with respect to
7 bringing some of the noncategorically related into Medicaid,
8 we find this to be preliminarily a very constructive
9 provision.

10 We would like to work out, this afternoon, some of these
11 details about it ---what level you would like to subsidize.
12 We would like to work on some preliminary cost estimates for
13 it.

14 The last comment I would like to make, I do not want to
15 be quite as supportive until we have looked a good deal
16 further on the last item Jay was mentioning. This business
17 about taking some of the burden off Medicare.

18 As Jay would agree, there is not any free lunch. If it
19 is not going to be funded out of the Medicare payroll tax, who
20 is going to fund it? Does that end up being regressive or
21 progressive or wht?

22 We would want to look a lot closer at that last feature,
23 but that is a separate feature anyway.

24 Senator Dole: What about the industry? Who speaks for
25 the insurance industry?

1 Mr. Constantine: Senator, we wanted to divide this in
2 two parts. Jim was addressing this, rather than the other.
3 The other thing we will just write up for him to look at it
4 and tell us which way you want to go, that is all.

5 The Chairman: Let me ask you about this part of it. In
6 this suggestion that you worked out, that all the staffs do
7 know about, I am just looking at your chart. At the \$8,000
8 level you would have a 75 percent subsidy so that the insured
9 would put up one-quarter, 25 percent, in order to be insured.

10 If he were working for an employer, would not the
11 employer pay that 75 percent as a subsidy?

12 Mr. Constantine: Yes, sir.

13 The Chairman: Basically what he would be getting is the
14 same thing that he would have had had he been working for an
15 employer with the employer putting up three-quarters of the
16 cost of it.

17 Mr. Constantine: Yes, sir.

18 The Chairman: All right.
19 You can bring it to us as you want.

20 Senator Dole: I would like to hear from the industry who
21 met yesterday afternoon, too.

22 Mr. Troy: John Troy, Traveller's Insurance. We would be
23 very enthusiastic about the proposal in this paper that was
24 submitted this morning.

25 Senator Dole: How many people do you think this might

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1 cover? Do we have any figure on that?

2 Mr. Troy: We had a fairly wideranging discussion on
3 where that might end up. I guess we are not sure, Senator.

4 Senator Dole: \$5 million.

5 Mr. Troy: I have heard numbers as high as that. It does
6 not seem like it would be that many.

7 Dr. Mongan: When we look at the numbers, the potential
8 pool could be much higher than that but we think ---this is
9 very rough, please. We have just seen it this morning. We
10 think the number of people who would avail themselves of this
11 is probably in the three to four million range.

12 If you look at the total population of the country, the
13 number of them, if I have this right, who are not employed,
14 not low-income, not covered under Medicare-Medicaid, it is 16
15 million. We do not think that nearly all of those would avail
16 themselves of this.

17 Senator Dole: That is the group that Senator Ribicoff --

18 Dr. Mongan: The group that Senator Ribicoff --

19 Senator Dole: Below that --

20 Dr. Mongan: Is the low income of the 32 million low
21 income. There are seven. We feel we have to make some
22 alternative arrangements for the very poor.

23 Mr. Constantine: We also ought to point out two things.
24 In your definition of dependents for purposes of the employed
25 catastrophic plan, the collateral dependents, you are picking

1 up a substantial number of people. Again, we are going to
2 wind up to a bottom here.

3 You are picking up a substantial number of people who are
4 not insured today but who are in families headed by an
5 employed individual. Is that right, Jim? It think the
6 estimate is 40 percent, 46 percent of those uninsured today,
7 without regard to the adequacy of the coverage they have are
8 in families headed by an employed individual.

9 Dr. Mongan: That is right.

10 Mr. Constantine: By your liberal definition, you are
11 picking up a lot of people who are not covered.

12 The Chairman: Let us see how we could do this, now.
13 Basically you are coming in here with a suggestion that these
14 people ---you would try to work it out so they would pay less
15 and get more, they would get more protection.

16 Mr. Constantine: Yes, sir. They would get the standard
17 protection and pay less for it.

18 The Chairman: Right.

19 How much do you suppose this would cost somebody? Here
20 is a worker making \$8,000 a year. What is it going to cost
21 him?

22 I would assume that this would go in the pool, I guess.
23 The state pools?

24 Mr. Constantine: Mr. Chairman, our rough estimate would
25 be the total premium costs might be \$300 for an individual --

1 an individual, not a family. So, under this, someone with an
2 income of \$8,000 would pay \$75. He would be subsidized for
3 \$225 of that. The family would be \$500 or \$600.

4 Mr. Troy: \$900, \$800.

5 Mr. Constantine: \$800 for a family, so a subsidy under
6 those circumstances would be \$600. The individuals, the
7 family liability would be \$200 in premium.

8 The family, again, Mr. Chairman, would be subsidized.
9 That is one subsidy under this approach, the premium subsidy.
10 At the same time, you are subsidizing the reduced deductible.
11 At \$8,000 the deduction would not be \$3,500; \$2,000, 25
12 percent of income. The difference between the \$2,000 and
13 \$3,500 would also be subsidized by the Federal government.

14 Senator Dole: Back to the basic, does the industry see
15 any problem as far as administration of this segment?

16 Mr. Troy: Senator, as we see it, an individual under
17 this program would be electing to buy a private insurance plan
18 on an individual by individual basis. In making that
19 election, he would be informed of the availability of this
20 program and an eligibility determination would be made.

21 Say the premium for a specific individual ended up at
22 \$600. If he was entitled to a subsidy of 50 percent of the
23 premium, the insurance company would collect \$300 from an
24 individual on a basis periodically, the other \$300 from the
25 government.

1 We do think the concept is workable.

2 As to the numbers of people, according to our numbers,
3 about 15 million people presently without catastrophic
4 coverage. The extension of the employment based plans would
5 pick up 8 million of these people, so you will have the seven
6 million.

7 In addition to that, I suppose you would have some people
8 who are presently covered by individual policies who would be
9 able to avail themselves of the subsidy.

10 As Dr. Mongan says, the numbers elected are really
11 relatively uncertain. There is quite a wide range of
12 possibilities here.

13 Senator Dole: We need to narrow the numbers to find out
14 the cost.

15 Mr. Constantine: Yes, sir.

16 Again, the Committee directed us to come back with two
17 parts for low income, and defining this as one segment of the
18 low-income population. This is an approach that we suggest to
19 you.

20 The second part obviously is the tough part for the
21 people below Medicaid eligibility levels, whether they use the
22 Federal standard or state standard, who are the singles, the
23 childless couples and the intact families who are presently
24 ineligible for Medicaid because they do not have a categorical
25 relationship. That is the tough part.

1 Those people generally old not come in these ranges.
2 These are for people above those levels.

3 The Committee's choices are to do all or none, and
4 anything in between in terms of mandating that states cover
5 these people, or some groups of them, whether you choose to
6 put in the minimum eligibility standard, as the administration
7 proposes; whether you choose to give states discretion -- but
8 there is a substantial segment of the population who, at this
9 time, under the Committee's decisions, are still not covered.

10 Those are singles, childless couples and the intact
11 families below the test of present state Medicaid eligibility
12 tests for the administration's 55 percent standard.

13 Jim?

14 Dr. Mongan: The only other point I would make, in the
15 work we do this afternoon intending to put some cost estimates
16 together for this new piece, we will have to make a serious
17 assumption about what you might do with the rest of the
18 low-income population, to use a very rough number -- please do
19 not hold me to it.

20 If you had done all that we recommended in the low-income
21 area, the \$7.2 billion, you may be talking about something
22 like an additional \$2 billion to do this. If you are able
23 only to do a portion of that, \$5 billion of the \$7 billion,
24 the cost of this will go up. It will not go up dollar for
25 dollar but it will go up some, because you will have some

1 additional cost.

2 Senator Durenberger: As long as we are looking at it,
3 one of the other related areas, I would appreciate your taking
4 a look at it. I do not mind going to a subsidy of premium,
5 but when we do, my concern becomes, are we going to subsidize
6 the \$800 family premium and the \$1,000 or \$1,200 family
7 premium?

8 Is there is a way to provide an incentive for the
9 insurers to hold down these premiums by limiting the subsidy
10 in some way?

11 Mr. Constantine: The answer to your question, we
12 discussed it, I think, a little earlier, is that the state
13 insurance departments have to certify in accordance with the
14 overall policy of the department and whatever you do
15 statutorily, the reasonableness of it given insurers premiums
16 for catastrophic coverage and benefits.

17 The problem raised earlier, you have two identical
18 policies, both providing the identical benefits for someone,
19 for an individual, one for family, one at a premium of \$800,
20 the other at \$1,000.

21 I think your concern is, why should we subsidize the
22 \$1,000 when we can get it for \$800? I guess the kinds of
23 considerations, all things being equal -- if all things were
24 equal -- there is no reason to do that, Senator, but you might
25 have a situation where one insurers group tends to be older.

1 They might have an overage age in that population of, say, 50,
2 and another average age is 35.

3 There are significant actuarial differences in those
4 circumstances. The higher premium might be justified under
5 those circumstances.

6 Assuming there are no valid actuarial differences, I
7 think our view would be, you are certainly right on that.

8 Dr. Mongan: I would like to associate both ourselves
9 with that. We do not want to get in a position where we are
10 subsidizing premiums, regardless of how reasonable they are.
11 Maybe we could adopt some of the competitive measures you
12 talked about, some kind of multiple choice, for example, in
13 this group.

14 We would have to have some regulation in terms of
15 reasonableness of the premium, some combination of those two
16 things.

17 Mr. Constantine: Pay-out ratios if the premium is above
18 certain levels. There must be justified actual differences in
19 the composition of the group rather than simply because they
20 are there.

21 Senator Durenberger: There is somebody hopping up and
22 down over here from the insurance industry.

23 Mr. Troy: We had envisioned, in connection with this
24 program, that there would be a table of values of the
25 catastrophic insurance developed for the purpose of the small

1 employer's subsidy, or the impact of employer's subsidy that
2 you were talking about.

3 That table of values, we envisioned, would be utilized
4 here as well. There would be a government subsidy available
5 of a fixed amount for an individual, wherever he bought his
6 policy, presumably.

7 You answered, you said the individual would go out and
8 shop around and buy the policy where the subsidy would have
9 the greatest impact.

10 Mr. Constantine: That was in the original Long-Ribicoff
11 bill, that table of actuarial values to do that. I am not
12 sure, Senator, that those actuarial values would quite
13 adequately answer your concern. It is a major start for it, I
14 think, in the final analysis.

15 Where there are significant differences, we have to look
16 at it closely.

17 Senator Ribicoff: When you get to the stage of actuarial
18 values all the way throughout, three groups have a part of it:
19 the insurance industry, HEW and the Committee staff. Are
20 these actuarial values going to be submitted to the Committee
21 with the approval of the three groups, or are we going to have
22 three actuarial tables for us to work with?

23 Mr. Troy: Ultimately, Senator, the Secretary of Health,
24 Education and Welfare would have to make the final
25 determination of this table.

1 Senator Ribicoff: I know, but we are going to have make
2 some decisions when we report out this bill. Many of the
3 decisions will be based on actuarial values.

4 The experience of the Committee is, in the past, the
5 actuarial estimates have not been very good.

6 Maybe we are better off seeing the three actuarial
7 results and then try to find out how far apart you all are and
8 then we are going to have to make a determination of where we
9 go from there, if we have three big spreads.

10 Mr. Constantine: I think the actuarial values that John
11 is speaking of are in terms of a given insurance policy that
12 takes into account, for example, different cost levels, charge
13 levels in Kansas as opposed to Connecticut, those kinds of
14 elements, as opposed to the actuarial estimates for the
15 various elements of the bills.

16 Those are the actuarial values in determining the
17 reasonableness of a given policy, offered in a given state for
18 that population as opposed to another population.

19 Is that correct, John?

20 Mr. Troy: That is right. To provide input, we had
21 envisioned this table would be developed by a Committee of
22 actuaries that would be reporting.

23 Senator Ribicoff: You are also going to be making
24 actuarial judgments on every phase of this. Dr. Mongan talks
25 about three million, five million. You actuaries must have

1 a pretty good idea of numbers, too. You may differ from HEW.

2 Mr. Troy: I think you are right. The numbers on the
3 people involved are more important.

4 Senator Ribicoff: We would be interested in the
5 actuarial results of the private sector as well as the
6 government sector. It would be very important for us to look
7 at those figures.

8 I would like that independently, if it is all right with
9 the Chairman, an independent actuarial study as well as an HEW
10 actuarial study.

11 Senator Durenberger: Mr. Chairman, I hope I can get Jay
12 to dream on this, because I think we might come up with a
13 better answer.

14 Mr. Constantine: I agree with the Senator on that point,
15 provided you can narrow it down. We have really thought about
16 this, to allow for legitimate differences and not recognize
17 what is really padding or a deficiency or an excess in costs.

18 Dr. Mongan: If I might add one other element into our
19 plans since we are having this purchase from a public
20 program, the premium would be set on a no-profit no-loss
21 rate, wherein this will be subsidizing the private premium,
22 and we do have to look at ways that we can assure that the
23 premium is reasonable.

24 The Table of Actuarial values deals with part of the
25 problem. You could base the subsidy on the actuarial value.

1 There is an issue there whether the insurer is then free
2 to charge anything above that and have the person pay it, and
3 we are somewhat concerned about getting into that situation.

4 The Chairman: Well, it seems to me we are developing a
5 pattern where the low-income as you move from the middle
6 income low down, we developed a pattern that they pay less and
7 they get more ---that they get more protection and they pay
8 less for it, and I think that is fair, because they have less
9 to pay with.

10 Then you come to the very bottom end of it. That is the
11 part where the states are presently taking care of it under
12 their Medicaid program, and I should think for those welfare
13 clients, those in the same situation, even though they are not
14 on welfare, that we are going to provide them their medical
15 care. They get theirs, you might say, out of tax monies.

16 So that we then have a program where you start out with
17 the poor at the bottom ---the very poor, the welfare clients
18 are going to get their medical care and basically that is part
19 of the burden that we pay to try to look after our poor, and
20 above that you get into those who are working and earning
21 something, so they are not on welfare, but on the other hand,
22 they are not eligible for Medicaid, but they pay less and they
23 receive more benefit as a part of what they are buying, the
24 policy that they are getting.

25 This lower income part of it will cost, to the degree

1 that we are not going to pay for it in the first year, so we
2 are going to have to phase that in. Is that not right, Dr.
3 Mongan?

4 Dr. Mongan: That is one approach to ameliorating the
5 immediate impact. You could phase it in. We were starting it
6 all in '83.

7 Certainly phasing it in before that, and some after that,
8 I think might make some sense.

9 The Chairman: If we are going to do something, I think
10 we ought to get on with it. We ought to do something, not
11 just zero. People do not like to be told just to keep
12 waiting. They have been waiting for 20 years now. They have
13 been hearing speeches ---more than 20 years.

14 I heard debates ---I heard some eloquent oratory from
15 Hubert Humphrey before I came to the United States Senate and
16 before he came to the United States Senate speaking for health
17 insurance.

18 We are going to get to the point where we are just not
19 talking about matters anymore, but we are actually showing the
20 people that we are going to do something. I think it is
21 better to start and phase on up with it than just to do
22 nothing.

23 Dr. Mongan: I think you are absolutely correct. If you
24 can begin and phase in the kind of additions to Medicaid we
25 talked about combined with this piece today and the employer

1 piece I think you have, in fact, provided for each group of
2 the population in that fashion.

3 Senator Dole: What is it all going to cost?

4 Dr. Mongan: That is what we have to look at when we have
5 the cost of each of these pieces. Our original low-income
6 stuff -- you would be talking about phasing in expenditures of
7 about \$7 billion if you did it all.

8 Again, this is very rough; please do not hold me to it,
9 but maybe in the vicinity of \$2 billion.

10 The employer piece was rather small, as I recall, about
11 \$250 million.

12 So there you are looking at a total. Dr. Davis corrects
13 me, about \$1 billion. You are looking at a total of ten.

14 The Chairman: Jay, are you shaking your head because you
15 do not agree, or just rubbing your head?

16 Mr. Constantine: A little of each.

17 The thing we wonder about these numbers, because they are
18 1980 dollars, you use 1983. By 1983, you are talking about at
19 least 30 to 40 percent more in terms of price changes,
20 population changes and utilization.

21 All we want the Committee to have is whatever numbers,
22 allowing Senator Ribicoff's concern, as honest a count as we
23 can give you or get for you, and then you make your judgment.

24 Dr. Mongan: I would agree with that.

25 As you indicated, if we phased some of it in 1981 and we

1 wanted to look at those costs in '81 dollars, if we are
2 phasing some in '83, we will look at those in '83. We should
3 also be looking at the Federal budget and the cost in Medicare
4 and Medicaid, all going up in each of those years.

5 Mr. Constantine: In working on this further, I had
6 another dream about how we might get it to some of the people,
7 at least on a minimum basis, with whom Senator Ribicoff is
8 concerned, below the Medicaid eligible.

9 Again, we do not have cost.

10 One approach might be to think about ---and we will play
11 with it -- if you had a \$2,000 deductible as we suggested here
12 as a possibility, minimum, you might require states under
13 Medicare for anyone who was eligible whose income is eligible,
14 regardless of whether they are categorically related, that the
15 state assume liability for covered costs or arrange for the
16 insurance for covered costs above that \$2,000.

17 By definition, they are below that. Then the state,
18 frankly, has an incentive to help with that first \$2,000, just
19 another approach, but you would be putting a floor of
20 protection on everyone is who is low income under that
21 approach, or ceiling rather, on their cost.

22 We just want to play with that one as well, too. As an
23 approach, that is less costly than you could phase in that as
24 well.

25 Senator Dole: Is there another area, Sheila, that you

1 were talking about, the corridor we were talking about the
2 other day? Has that been considered by the staff?

3 Ms. Burke: The remaining question is what we would do
4 with the employed low income. The decision last week on the
5 Committee was that we would subsidize the corridor, the amount
6 between their income and the actual deductible that is paid
7 for through their employer-based insurance.

8 The question is whether or not we could go to something
9 other than a corridor subsidy and do it through the premium
10 side for the employed also. That, I know, was discussed
11 briefly. It has not been discussed in any detail.

12 The insurers have indicated they would be interested in
13 looking at that possibility rather than staying with the
14 government subsidy at the corridor.

15 Senator Dole: That can be discussed.

16 Mr. Constantine: We are going to look at that this
17 afternoon and see what is a more workable approach, and more
18 equitable.

19 The Chairman: Do you have anything else?

20 Senator Packwood: I have a couple of amendments on
21 behalf of Senator Dole and myself. These have been worked out
22 with both Jay and the Minority staff.

23 One, as you are aware, under the Medicare program we have
24 a home health aid program trying to keep people from having to
25 be institutionalized. I want to add to it homemakers, so when

1 the home health agency is there, or homemaker is there who is
2 eligible to give home health service, they can provide
3 homemaker services in the home.

4 The estimated cost of it is \$25 million to \$50 million
5 and we would start it in September, 1980.

6 The second amendment is to allow those home health
7 recipients who are able to receive home health services in
8 Title XX, adult day care centers, if they can get to the day
9 care centers so that they do not have to perpetually be in
10 their house. They have to be able to have access to the Title
11 XX day care center.

12 That amendment is about a \$5 million to \$10 million cost,
13 Jay, unless I am mistaken, is it not?

14 Mr. Constantine: Mr. Chairman, Bob Hoyer of the staff
15 worked with Senator Packwood on it. We certainly think it is
16 a meritorious amendment.

17 Senator Packwood: Both amendments.

18 Mr. Hoyer: We understand that there would be no cost
19 associated with the first change.

20 Senator Packwood: The homemaker change?

21 Mr. Hoyer: Yes. It essentially is a change in name to
22 bring it up to date with modern terminology. Is that not
23 correct?

24 Senator Packwood: Yes, that is.

25 The Chairman: Dr. Mongan, does that sound all right to

1 you?

2 Dr. Mongan: The first one as described this morning by
3 Mr. Hoyer sounds all right. I guess I would like to hear the
4 second one again. I am sorry.

5 The Chairman: Let's agree on the first.

6 All in favor, say aye?

7 (A chorus of ayes)

8 The Chairman: Opposed, no?

9 (No response)

10 The Chairman: All right. Take the second one.

11 Senator Packwood: The second one, to allow the home
12 health recipients, if they are able to get access to the Title
13 XX adult day care center to be able to receive services there
14 so they can get out and mingle a bit and not be totally
15 housebound. The estimated cost I had was \$5 million to \$10
16 million on it.

17 Dr. Mongan: It sounds difficult to take a position where
18 we keep the elderly in their homes instead of going to the
19 centers. I think I could say we are comfortable with that
20 also.

21 Mr. Constantine: There are many Senators who are trying
22 to keep people out of nursing homes, one of which Dr. Mongan
23 is very familiar with the Onlock Center in San Francisco,
24 which is superb. I think Senator Packwood's amendment is
25 directed regarding those as a home environment.

1 The Chairman: All in favor, say aye?

2 (A chorus of ayes)

3 The Chairman: Opposed, no?

4 (No response)

5 The Chairman: The ayes have it.

6 Yes, sir.

7 Senator Durenberger: May I add one point, Mr. Chairman?

8 Your mention of Hubert Humphrey reminded me that as long as
9 Sleeping Beauty here is taking advantage of the private
10 delivery system for low income, our catastrophic that I would
11 appreciate some consensus from the Committee to ask the staff
12 to take a look at how we could incorporate the competition
13 elements that I included in the health reform act in our
14 discussion of catastrophic and the private delivery system
15 responding to the needs of low income.

16 I think I have discussed with Jay some of the principle
17 elements of it. I have discussed with him some of the changes
18 that we made since we originally introduced the bill back in
19 July.

20 I think that it would be good for the Committee before it
21 makes a final decision on catastrophic and low-income to see
22 how some of these programs might relate to the multiple choice
23 equal employer contribution concepts that are in that bill.

24 Mr. Constantine: Senator, we certainly agree on that
25 and would be very glad to work on approaches towards enhancing

1 bona fide competition while avoiding adverse selection or
2 skimming out risk. That is the concern there, or the
3 impairment of the many self-insured programs around.

4 Those were the kinds of concerns. I do not think that
5 they are insuperable. There are ways to enhance competition.

6 The insurance industry, we raised that with them again,
7 would also like to address the committee when you get to cost
8 controls that Senator Ribicoff said, and would like to do more
9 -- would like authority, for example, to negotiate with
10 physicians collectively, which they cannot do today, for
11 antitrust reasons and to negotiate with hospitals as a means
12 of moderating the cost of what they are paying for as well,
13 and utilization.

14 If you would like for them to raise that now, so we can
15 understand it, we are at a stopping point now. We have to go
16 back and draft some more.

17 Senator Dole: There is another area of the Medigap that
18 Senator Baucus and I have an interest and Senator Chiles.

19 Mr. Constantine: We were waiting on Senator Baucus on
20 that one. I think Senator Packwood wanted us to point out --
21 I think we should have yesterday -- we were not cautioned in
22 the committee, the \$1,000 limit in copayments and deductibles
23 under Medicare, a lot of that work was done with Senator
24 Packwood and his staff people on that.

25 The Chairman: Mr. Moynihan?

1 Senator Moynihan: Mr. Chairman, could I make a general
2 point?

3 If Mr. Constantine is talking about going back to
4 drafting, first, may I say that the catastrophic health care
5 insurance provisions which we are agreeing to is an historic
6 accomplishment? This is no small event. It just is nobody is
7 watching, which is maybe why we are getting it done.

8 As we turn to the low-income provisions, I would simply
9 like to say that the concerns of my state and states like
10 mine, Senator Ribicoff's is one and Senator Bradley's is
11 another -- that we have got to ask for a certain attention to
12 be paid to our special situation which is that we have taken
13 up just about every option in medical care that exists.

14 It would be very difficult for this committee, even with
15 our imagination, to think of providing some health service to
16 the nation that is not already in place in New York.

17 Our problem is that we cannot keep the ones that we have
18 and we are always closing hospitals, in one kind of trouble or
19 another, and if we are going to follow the route, the Carter
20 administration has never understood this point in welfare
21 proposals and things like that.

22 It does not matter how often you state to them. They
23 cannot understand that they are not adding anything to states
24 such as our own. They are just accepting taxes.

25 Elsewhere, they are providing new services, but we are

1 not getting any of the fiscal relief that we are going to have
2 to have just to maintain what we have already established.

3 The administration's proposal in this respect would be a
4 disaster to us. But I have to say -- and he will understand my
5 saying it, because we admire him in so many ways for so many
6 things -- Mr. Constantine's proposal is a bit of a disaster
7 too.

8 I think in your estimating what would be the fair
9 distribution of costs in this thing, will New York want to get
10 \$600 million? Well, let's have a ceiling of \$200 million.
11 That is a phenomenon.

12 The point is, earlier on, the Long-Ribicoff provision was
13 very much more effective. It was a provision that says states
14 will not have to provide more than a certain cost per person
15 or per thing, per unit of care.

16 I have to say I do not expect a lot of sympathy for this
17 point of view, but I would like it understood -- no sympathy
18 from Mr. Danforth, a man otherwise not known for his lack of
19 compassion, but it is a fact and I would like this on record.

20 I notice that it is a fact for us. I am sorry.

21 Senator Ribicoff: You have not been to some of these
22 sessions. We have not foreclosed out that concept of your's
23 yet.

24 I think that there has been considerable discussion
25 around here. The Chairman and Senator Dole are sympathetic,

1 that you are going to, one way or the other, whatever you do,
2 freeze the states at their present costs. The additional
3 costs will be one way or the other Federalized, either through
4 the private insurance or the Medicaid or trying to find a
5 substitute to go the Dole route.

6 The taking up the lower income groups, I do not think
7 that there is any intention in any of the discussion that we
8 have had, to increase the costs to the states by any of us.

9 Senator Moynihan: Could I make the point, we are going
10 to increase the cost to the Federal government. What I do not
11 think we should ask about, should we provide, should the same
12 health service, be 50 percent state costs in New York and 100
13 percent Federal costs in Missouri?

14 That is a phenomenon that will emerge by increasing
15 services in the low-service states, having all the extra
16 service provided for by the Federal government while
17 maintaining the cost sharing in those states that have already
18 exercised that option?

19 I just make the general point, if I cannot get a
20 compassionate response from John Danforth, I am probably in a
21 lot of trouble, but he is smiling.

22 Mr. Constantine: Senator Ribicoff showed us the error of
23 our ways yesterday on the staff alternative. Senator
24 Ribicoff indicated the error of our ways yesterday very
25 clearly to the staff.

1 Senator Ribicoff: I was looking out for your interests.
2 What we are trying to work out is have equal treatment
3 for the low-income groups, as well as the middle class. This
4 is what we are wrestling with.

5 Everybody is trying to address it. I imagine we will be
6 wrestling with it in quite a number of days and everybody is
7 working on it and your input would be more than welcome. It
8 would be valued.

9 Senator Moynihan: I accept that mild chastisement.

10 Senator Ribicoff: There is no chastisement because I
11 have been sitting here with your proxy and I am assuming any
12 time I talk I am talking for you, too.

13 The Chairman: Senator, in your absence we have been
14 working on a proposal that the further down the income ladder
15 you get, the less you pay, and the more you get in return for
16 it, until you get to the bottom where you pay nothing and you
17 get all your health taken care of.

18 We did not have enough money to pay for it now. We are
19 trying to figure out where to phase it in.

20 I am optimistic that we can get together on this thing
21 and will work out a way to do it. We are not going to do it.
22 We are not going to put New York out of business. We know
23 that it would be a waste of time to try to do that with Pat
24 Moynihan sitting here.

25 We are not going to spend out time on it, completely

1 frustrating efforts. We are going to try to do something that
2 might have a chance to succeed. We are not going to bankrupt
3 New York, not in this committee -- maybe somewhere else, but
4 not here.

5 Senator Dole?

6 Senator Dole: Senator Baucus had something.

7 Senator Baucus: Yes.

8 I do not know if this is an appropriate time. I have an
9 amendment to provide for Medigap coverage. As members of the
10 Committee know, one of the big problems in Medicare coverage
11 is that Medicare does not fully cover the health care costs of
12 senior citizens and the private insurance industry sells
13 policies to make up for the gaps, and the difficulty has been
14 that over the years documented in various hearings it has
15 become apparent that there are some abuses in this gap in the
16 difference between what Medicare pays and what the seniors
17 themselves have to pay.

18 My amendment, very simply, would provide for voluntary
19 certification programs where the insurance company could
20 voluntarily submit its insurance policy, its program needs to
21 HEW which could certify that it meets certain basic, minimum
22 standards in security and coverage and prevention of
23 duplication, et cetera, to help move us more towards a fairer
24 system of covering the seniors who otherwise have to buy
25 insurance policies which are not fully protecting them

1 according to the intentions that they undertake when they buy
2 those policies.

3 It would also direct HEW to study the program a little
4 more thoroughly to see, and perhaps report back by July '81
5 whether or not there should be a mandatory program.

6 I want to emphasize that it is a voluntary program to
7 begin to move towards a remedy of this problem.

8 Mr. Constantine: Senator, it has been the subject of a
9 number of bills in the House and Senate. Senator Dole is
10 particularly interest in this.

11 Virtually all the members of the Committee have expressed
12 concern over the Medigap problem.

13 The approach taken is essentially a variation of the
14 provision in the Long-Ribicoff-Talmadge bill which had a
15 voluntary certification, in effect, insurers voluntarily
16 submit their policies to the Secretary and he certifies that
17 they meet minimum standards and gives them a Good Housekeeping
18 seal which the committee could determine the nature of and it
19 serves as a guide to older people as to which might be an
20 appropriate policy with a reasonable pay-out of premiums and
21 so on.

22 Yes, sir?

23 Senator Dole: I think you are correct.

24 In fact, I mentioned to Senator Chiles yesterday that we
25 might be discussing this. There are some similarities in the

1 bill, but also there are some rather major differences. They
2 are both aimed at trying to decrease abuses that have been
3 pointed out by the Federal Trade Commission and others. Both
4 require the Secretary of HEW to develop minimum standards for
5 supplementary health insurance.

6 Both bills require HEW to disseminate information on
7 supplemental policies. Both provide for various penalties,
8 not exactly the same, but the one major difference ---and I
9 think the insurance industry's view should be considered
10 ---they should be considered, but they should not be accepted
11 without some discussion, but they feel very strongly about the
12 voluntary certification program.

13 In S. 395, the Chiles-Dole proposal, we studied the
14 feasibility of a certification program. In Senator Baucus's,
15 he just establishes a voluntary certification program. He also
16 establishes standards to be used for certification and we
17 establish a model legislation to propose adoption by the
18 states.

19 He relies on acceptance of standards previously developed
20 by the National Association of Insurance companies and we do
21 not. He requires FTC study, he does not.

22 I think there are probably enough similarities that we
23 could come to some agreement, but I think in the interests of
24 having the input from the private sector, maybe they could
25 respond to the question of whether or not there should be this

1 voluntary certification.

2 Mr. Constantine: I would be very glad to have them
3 respond, but I should point out that there is a little more
4 urgency, in terms of the certification program, because of the
5 limit you place. You voted yesterday on copayments and
6 deductibles of not more than \$1,000 a year in medical
7 copayments and deductibles for any beneficiary that was
8 significantly reduced for many older people, resulting in a
9 moderation or a decrease in the premiums charged for this
10 complementary or supplementary policies.

11 In other words, the insurers selling this supplemental
12 stuff has less liability now, because the Federal government
13 is picking it up. Under those circumstances, you might want
14 to make sure that the older people, the beneficiaries, get the
15 benefit of that rather than just having them pay the same
16 premium without regard to what Congress has done.

17 Senator Ribicoff: May I make a comment?

18 I think that the Baucus-Dole approach is very important.
19 It could be that we may not be able to pass a health insurance
20 this year, and I think that there is no reason why the
21 Baucus-Dole approach should not be put into some law and not
22 just tied up with this.

23 I was rather amazed, when my mother-in-law was ill and
24 dying and she had a lot of supplementary insurance and my wife
25 gave it to me to read and it was all useless and I could just

1 imagine how much she had been paying over the years. It was a
2 very shocking experience to find out how elderly people are
3 bilked.

4 I certainly commend Senator Baucus and Senator Dole and I
5 would hope that you would find a measure fast that we could
6 put this on and not just work for the passage of the health
7 insurance program.

8 The Chairman: Let's hear from someone in the industry
9 and see what their view on this thing is.

10 Mr. Troy: Senator, I think that our major reaction would
11 be that it would look as though it would result in quite a bit
12 of duplicate regulations. There is not a day that goes by
13 that an individual state is not moving in this area with some
14 proposed regulation or final regulation.

15 The industry is cooperating very much with the National
16 Association of Insured Commissioners to solve this problem.
17 We think hat it has arisen ---it has become a widespread,
18 nationwide problem, but basically it is limited to a few
19 areas, so our major approach at this point would be to
20 accomplish through the state regulatory process instead of
21 duplicating regulations on the Federal level.

22 Senator Ribicoff: Out of curiosity, the policies I saw
23 were from companies I had never even heard of. I imagine a
24 lot of this stuff must be done through the mail. A lot of it
25 probably the state insurance commissioners never get at it.

1 This is my guess.

2 What you are trying to do, you are talking about the
3 insurance companies that go through the states and are
4 licensed to do business in the states. I think that what
5 Senator Baucus and Dole are getting at are many of these
6 things that the so-called legitimate insurance companies
7 should welcome to try to close this loophole.

8 Mr. Troy: I think that is generally the reaction of the
9 industry, Senator. Even companies that are not licensed in
10 all states are licensed in some states, and I believe when
11 this is all through, all of the states will have adopted
12 regulations.

13 Mr. Constantine: Senator, in 1971, the Anti-trust and
14 Monopoly Subcommittee held hearings and came up with a lot of
15 significant abuses in mail order insurance. The following
16 year, the National Association of Insurance Commissioners
17 adopted model legislation, but in '79, less than half the
18 states had adopted those model standards, seven years later.

19 Senator Dole: Twenty-five states.

20 Mr. Constantine: There are also states on record as
21 asking the government to step in ---this is information from
22 the House Committee on Aging, Senator Pepper's committee that
23 did a lot of the investigative work and exposure.

24 They said they had states asking the Federal government
25 to step in this area, including Connecticut, Delaware,

1 Florida, Kansas, Maine, Michigan, Minnesota, Mississippi,
2 Missouri, New York, North Dakota, South Carolina, Utah, West
3 Virginia, New Hampshire, Massachusetts, Rhode Island, Vermont.
4 We are trying to get as many of the Committee members in here
5 -- Washington, Georgia, North Carolina, Idaho and Nevada.

6 These were among the states which had requested Federal
7 action in this area.

8 Senator Baucus: I might add, too, Mr. Chairman, I was
9 amazed at the number of senior citizens in my state of
10 Montana, that must be representative around the country of the
11 incidence which seniors raise this problem, the number of
12 times when senior citizens would buy obviously tremendously
13 duplicative policies with the loss ratios that did not make
14 much sense at all.

15 This is not regulation. It is a voluntary program,
16 entirely voluntary. An insurance company could submit its
17 plan to HEW voluntarily for certification. It is not a
18 mandatory program at all.

19 Beyond that, the NAIC recommendations have not been
20 adopted by the states in the main. They were first
21 suggested in 1956. According to my information, only four
22 states have adopted them.

23 It seems to be because it is a voluntary program, because
24 there is a need for some action in the area.

25 Mr. Constantine: GAO has also endorsed this and the

1 Department is strongly in support of it.

2 Dr. Mongan: I would like to speak strongly in support of
3 the Baucus amendment. The history of abuse is long here.
4 This, after all, is a fairly modest proposal for a voluntary
5 certification program which we support.

6 Mr. Troy: We do agree with the concern. Again, I think
7 it would be unfortunate if the states, if they did not move
8 quickly enough. We would agree with that.

9 It would involve in effect, the Federal government in the
10 whole gamut of what the states do to regulate policies, the
11 premium rates, the form of the policies, the descriptions that
12 people get as to their benefits.

13 So it would appear to us to be a major regulatory process
14 at the Federal level which, as I say, would be unfortunate, if
15 that was duplicative of what the states were doing.

16 There was a great amount of state activity, right now, as
17 I know from personal experience.

18 Senator Dole: Is there some way, Mr. Constantine,
19 without doing violence to either approach that we could reach
20 an agreement on this?

21 Mr. Constantine: Yes, sir, we believe so. It seems to
22 me that number one, the Baucus amendment -- I am sure there
23 are quite a few sponsors, is voluntary, number one.

24 The Chairman: Is voluntary?

25 Mr Constantine: Is voluntary, for the insurers to submit

1 their policies.

2 Secondly, you could require that the Secretary, in
3 evaluating whether a given policy meets the standards, not
4 duplicate what a state has done, accept the state's findings
5 as to whether a standard is complied with. Simply a Good
6 Housekeeping Seal.

7 Senator Dole: Would that not ease some of the pain, as
8 far as additional regulation?

9 Mr. Troy: I think we should possibly discuss whether
10 there is a possible compromise there as to the delegation to
11 the states as to the certification program where the states
12 agree to it.

13 Mr. Constantine: Apparently, they do have that. They the
14 certify that these policies meet those standards.

15 When a company, Pan American or Aetna or any of these
16 applies for certification so they can put the symbol on and
17 use it in soliciation, the state insurance departments certify
18 to the Secretary that those standards are complied with.

19 The Chairman: Are you just asking for the Federal
20 government to certify that this policy meets a state standard?
21 Is that all you are asking for here?

22 Mr. Constantine: The standards are established in the
23 amendment and the state certifies that the companies say we
24 would like to have that Good Housekeeping Seal, so we send our
25 policy to the Secretary. We think our policy meets those

1 standards, and we want to use it in our advertising.

2 The Secretary then goes to the state insurance department
3 and mechanically says yes, they are right, and validates the
4 state that, in fact, the company meets the standards. They
5 are not obligated to do it.

6 The Chairman: The Secretary is certifying their meeting
7 state law standards?

8 Mr. Constantine: The state certifies that that insurer
9 meets the standards specified for certification in the Federal
10 statute which may, or may not, be the state standard. Some
11 states will have stronger standards than those in the statute.

12 But it is voluntary certification.

13 Senator Baucus: These are standards that would be set
14 with consultation with the National Association of Insurance
15 Commissioners, not arbitrarily set by HEW either, and it is a
16 voluntary program.

17 Senator Dole: Jay, would you give the second part of
18 your compromise there?

19 Mr. Constantine: Again, I believe it was primarily in
20 the bill anyway, Senator.

21 The Secretary does not go out and investigate unless he
22 has good cause that the question of the determination of
23 whether, in fact, a given policy meets the standards which the
24 insurer claims for it is done by the state insurance
25 departments who certify to the Secretary.

1 Senator Dole: What about other aspects of the bill, the
2 penalty sections? The administration looked at -- do you have
3 any questions on the family provisions in the Baucus proposal?

4 Mr. Constantine: These are the same penalties that we
5 have in the Medicare statute for fraud, \$24,000 or five years,
6 whichever comes first. It is the same for misrepresentation
7 of those.

8 Ms. Burke: There are two additional penalties that deal
9 with selling or duplicating policies and selling insurance
10 through the mail that has not been cleared with the Insurance
11 Commission. They are not currently covered by Medicare.
12 There is some question about those particular penalties.

13 Senator Dole: Does that pose any problem as far as
14 determining some violation?

15 Ms. Burke: I think, Senator, that there is a question
16 with respect to the ability of anyone to determine number one,
17 if somebody is selling a duplicative policy, the kind of
18 oversight of that penalty as to whether or not it could really
19 be implemented.

20 The second issue with respect to the Postal system. I
21 believe there are some questions that would need to be raised
22 with respect to jurisdiction, and so forth.

23 What the implication would be for the state if we got
24 into the business of saying the insurance commission had to
25 get involved in postal problems in terms of the selling of the

1 insurance.

2 Mr. Constantine: As I understand it, based on the
3 information from the House Committee, the states I have
4 described as asking for Federal intervention suggested the
5 language for the mail order penalties. Whoever normally
6 advertises or solicits or offers for sale by mail or
7 knowingly.

8 Senator Dole: I raise the question, if there is no
9 problem with it -- no constitutional problem or administrative
10 problem or creative problem for the state, I do not object.

11 Mr. Constantine: We do not see any constitutional problem
12 for using the mails to defraud or that kind of thing.

13 The Chairman: There is one item in here that Senator
14 Talmadge might be interested in. That being the case, I would
15 like to reserve -- I would just like to vote on this when he
16 is here. He may be interested in one aspect of this.

17 I just think that he would like to be here when we vote
18 on it.

19 Senator Baucus: I think we are all in agreement. Do you
20 know what Senator Talmadge's reservation is, what his
21 consideration is?

22 Mr. Constantine: Senator Talmadge's reservation has been
23 taking care of an earlier decision with respect to
24 catastrophic health insurance that did not preclude the mail
25 order sale of any other things to anyone.

1 The companies that wre expressing that concern were
2 selling supplemental policies to people under 65, not so much
3 on the Medigap side; that was taken care of in an earlier
4 decision that the benefits of those policies would not be
5 coordinated -- with those individual policies -- would not be
6 coordinated wih the catastrophic benefits. It was a different
7 issue.

8 The Chairman: It is all right with me to agree with it
9 with the understanding that after he has a chance to review it
10 that he wants to reconsider some aspect of it.

11 Senator Baucus: That would be fine.

12 The Chairman: Is that all right?

13 Senator Dole: I would make the same reservation. I do
14 not see any problem, but I would like to take another look at
15 it.

16 The Chairman: Without objection, we will agree to it for
17 the time being.

18 Senator Dole: There is one other area that we passed in
19 both houses of Congress; that is Medicare in Europe.

20 As I understand, it was in the Medicare Act of '78,
21 passed both houses of Congress but did not receive
22 conference consideration.

23 Under current law, I think reimbursement for service
24 abroad is limited to Canada and Mexico. What the amendment
25 would do is authorize the President to enter into reciprocal

1 arrangements with foreign health programs for eligible U.S.
2 medicare recipients in foreign countries and for foreign
3 nationals in the U.S. Coverage would be limited to those
4 services which have been approved for beneficiaries in the
5 U.S.

6 Are you familiar with this, Jay? Senator Ribicoff?

7 Mr. Constantine: It was not passed by both houses,
8 Senator. We had real problems with the concept.

9 I think the idea of providing some help for Americans
10 eligible abroad who choose to reside abroad on a reciprocal
11 basis, has merit. We have the kind of problem, Senator, with
12 the same thing that we have in Social Security. Illegal
13 aliens, or others who come here, work a few years, and then
14 they go back to, say, the Dominican Republic or the Philippines
15 or what you will and they collect Social Security benefits, as
16 to whether you want to also give them Medicare benefits.

17 There is an approach to dealing with that. One, you
18 could restrict it to people who are U.S. citizens and have had
19 at least 40 Social Security quarters fully covered under
20 Social Security.

21 Senator Dole: I agree it should be limited, but Senator
22 Ribicoff had an interest and he had to leave, and Senator
23 Long.

24 The Chairman: Let's take that up at the next meeting.
25 When are we scheduled to meet again?

1 Mr. Stern: Tomorrow morning at 10:00.

2 The Chairman: Tomorrow morning at 10:00.

3 (Thereupon, at 12:35 p.m. the Committee recessed, to
4 reconvene at 10:00 a.m. on Thursday, November 8, 1979.)

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